

Decision **DRAFT DECISION OF COMMISSIONER BROWN**
(Mailed 3/22/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion
for the Purpose of Amending the Commission's
Conflict of Interest Code.

Rulemaking 03-07-007
(Filed July 10, 2003)

**ORDER MODIFYING LIST OF DESIGNATED EMPLOYEES AND
APPLICABLE DISCLOSURE CATEGORIES AND ADOPTING
AMENDMENTS TO CONFLICT OF INTEREST CODE****I. Summary**

This decision adopts amendments to our Conflict of Interest Code. The code, as amended, is attached to this decision. The code will now be submitted to the Fair Political Practices Commission for its approval.

The adopted amendments are substantially similar to those contained in the proposed rules in this Order Instituting Rulemaking (OIR), as modified by Decision (D.) 03-09-012. Those rules are modified to incorporate changes to the list of designated employees and applicable disclosure categories, which have occurred since the issuance of D.03-09-012. To permit interested parties to comment on these additional changes we will extend the time for comment on this decision.

II. Background

We instituted this OIR to update our Conflict of Interest Code. The OIR included proposed amendments to the Conflict of Interest Code that reflected changes in and revisions to the Code's lists of employee positions and disclosure

categories since its last update in September 2001. In D.03-09-012, issued on September 4, 2003, we amended the OIR to include additional proposed revisions and changes to the Code. Subsequent to September 4, 2003, Governor Schwarzenegger added a number of 'exempt' employee positions, which should be included in the Code's list of employees. There also have been non-substantive changes to the employee list and inclusion of model disclosure categories language promulgated by the Fair Political Practices Commission.

We sent the original proposal to the Office of Administrative Law and to the Fair Political Practices Commission. The adopted amendments were widely circulated to those employees affected by the changes and to the employee collective bargaining representatives. The amendments proved noncontroversial. We have received no comments and no requests for hearing.

III. Discussion

The Fair Political Practices Commission has procedures that govern an agency's amendment of its conflict of interest code. Generally, an agency must permit comments, prepare an initial proposed amendment, and prepare a notice of intention to amend its code. (See California Code of Regulations, Title 2, § 18750 et seq.) The Fair Political Practices Commission's rules also require the agency to make certain findings, which we set forth in our order instituting this rulemaking. As with the amendments, the proposed findings proved noncontroversial. Accordingly, we find that the adoption of the amendments (1) will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with § 17500) of Division 4 of the Government Code; (2) will not result in any nondiscretionary cost or savings to local agencies; (3) will not result in any cost or savings in federal funding to the state; (4) will not impose a mandate on local

agencies or school districts; and (5) will not have any potential cost impact on private persons or businesses including small businesses. We also find that no alternative approach to that embodied in the amendments would be more effective in carrying out the purposes of the Political Reform Act or would be as effective and less burdensome to the individuals involved.

Briefly, the amendments are needed to reflect current circumstances, as those circumstances have changed since 2001, when we last amended the code. The amendments are of two basic types. First, certain categories of employees had to be added to or deleted from the lists of designated and nondesignated (“exempt”) employees. Second, some categories had to be changed because the classification had been retitled or expanded by inclusion of additional grades. We are satisfied that the amendments are well suited to their purpose and should be adopted as proposed.

This decision adopts rules that are modified from the proposed rules, as earlier modified by D.03-09-012. We lengthen the comment period provided by our rules to permit the public sufficient time to comment on the draft decision, including these modifications. We will modify the comment cycle to permit parties 30 days to file and serve comments.

The latest modifications regarding the Designated (Exempt) Employees and Applicable Disclosure Categories listed in Section 1(b) add the following:

Administrative Analyst (Specialist), (Categories 2, 3)

Administrative Analyst (Supervisor), (Categories 2, 3)

Advisor, Policy and Planning, PUC, (Categories 2, 3, 15)

Advisor, Energy Efficiency and Renewables, PUC, (Categories 4, 5, 6)

Communications Director, PUC, (Category 15)

Coordinator, Media and Public Relations, (Category 15)

Legislative Representative, (Categories 2, 3, 15), and
Small Business Community Liaison, PUC (Categories 2, 3, 15).

The modifications also include the following non-substantive changes to the Designated (Non-Exempt) Employees and Applicable Disclosure Categories listed in Section 1(a): (1) Associate Transportation Rate Expert is removed as an added non-exempt designated employee; (2) Personnel Services Specialist I is added to the list of deleted non-exempt designated employees; (3) Senior Electrical Engineer is removed from the list of deleted non-exempt designated employees; and (4) the titles Business Services Officer I (Specialist) and Business Services Officer I (Supervisor) are corrected to Business Service Officer I (Specialist) and Business Service Officer I (Supervisor), respectively. We also added the following model disclosure categories language promulgated by the Fair Political Practices Commission to disclosure Categories 2 and 3: “This includes any related training or consulting services.”

IV. Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure.

V. Assignment of Proceeding.

Geoffrey F. Brown is the Assigned Commissioner and Janice Grau is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The amended Conflict of Interest Code attached to this decision appropriately updates and corrects the Commission's Conflict of Interest Code as last amended in 2001.

2. Adoption of the amendments will not have any of the undesirable consequences set forth in the foregoing opinion.

3. Subsequent to the issuance of R.03-07-007 on September 4, 2003, Governor Schwarzenegger added a number of 'exempt' employee positions at the Commission. In addition, there have been other changes to the employee list and the addition of model disclosure categories language.

Conclusions of Law

1. The amended Conflict of Interest Code attached to this decision should be adopted and forwarded to the Fair Political Practices Commission for its approval.

2. R.03-07-007, as earlier modified by D.03-09-012, should be further modified to include additional proposed changes to the Conflict of Interest Code's Designated Employee's and Applicable Disclosure Categories. The following Designated (Exempt) Employees and Applicable Disclosure Categories should be added to Appendix II, Section 1(b):

Administrative Analyst (Specialist), (Categories 2, 3)

Administrative Analyst (Supervisor), (Categories 2, 3)

Advisor, Policy and Planning, PUC, (Categories 2, 3, 15)

Advisor, Energy Efficiency and Renewables, PUC, (Categories 4, 5, 6)

Communications Director, PUC, (Category 15)

Coordinator, Media and Public Relations, (Category 15)

Legislative Representative, (Categories 2, 3, 15), and

Small Business Community Liaison, PUC (Categories 2, 3, 15).

The following changes should be made to the Designated (Non-Exempt) Employees and Applicable Disclosure Categories listed in Appendix II, Section 1(a): (1) Associate Transportation Rate Expert should be removed as an added non-exempt designated employee; (2) Personnel Services Specialist I should be added to the list of deleted non-exempt designated employees; (3) Senior Electrical Engineer should be removed from the list of deleted non-exempt designated employees; and (4) The titles Business Services Officer I (Specialist) and Business Services Officer I (Supervisor) should be corrected to Business Service Officer I (Specialist) and Business Service Officer I (Supervisor), respectively. The following model disclosure categories language should be added to disclosure categories 2 and 3: “This includes any related training or consulting services.”

3. To ensure prompt implementation of these amendments, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Rulemaking 03-07-007, as earlier modified by Decision 03-09-012, is hereby further modified to include the additional proposed changes to the Conflict of Interest Code’s Designated Employees and Applicable Disclosure Categories as set forth in the foregoing Opinion and Conclusion of Law 2.

2. The amended Conflict of Interest Code attached to this decision is adopted.

3. The Executive Director shall forward this decision and attached code to the Fair Political Practices Commission.

4. Rulemaking 03-07-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT

CONFLICT OF INTEREST CODE PROVISIONS

As Adopted by the California Public Utilities Commission
(20 California Code of Regulations, Division 1, Chapter 2)

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the following list in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the proposed Conflict of Interest Code of the Public Utilities Commission of California.

1. Designated Employees and Applicable Disclosure Categories

Designated employees shall file statements of economic interests with the agency. Listed below are “designated employees” and their applicable disclosure categories:

<u>(a.) Designated Employees (Non-Exempt)</u>	<u>Applicable Disclosure Categories</u>
<u>Accounting Administrator I (Supervisor)</u>	<u>2, 3</u>
Administrative Assistant I	2, 3
Administrative Assistant II	2, 3
Administrative Law Judge I	15
Administrative Law Judge II	15
Assistant Chief ALJ	2, 3, 15
Assistant Chief PU Counsel	2, 3, 15
<u>Assistant Info Systems Analyst</u>	<u>2, 3</u>
Associate Budget Analyst	2, 3
Associate Governmental Program Analyst	2, 3, 15
Associate Info Systems Analyst (Specialist)	3
Associate Info Systems Analyst (Supervisor)	3
Associate Management Analyst	2, 3
Associate Personnel Analyst	2, 3

Associate Programmer Analyst (Specialist)	3
Associate Programmer Analyst (Supervisor)	3
Associate Transportation Representative	15
Business Service s- Officer I (Specialist)	2, 3
Business Service s- Officer I (Supervisor)	2, 3
<u>Business Service Officer II (Supervisor)</u>	<u>2, 3</u>
CEA Level 1	2, 3, 15
CEA Level 2	2, 3, 15
CEA Level 3	2, 3, 15
CEA Level 4	2, 3, 15
Chief Administrative Law Judge	1
Chief Hearing Reporter	2, 3
<u>Computer Operator</u>	<u>3</u>
Computer Operator C	3
Consumer Affairs Representative	15
Consumer Services Manager	15
Consumer Services Supervisor	15
Data Processing Manager I	3
Data Processing Manager II	3
Data Processing Manager III	3
Graduate Legal Assistant	15
Information Officer I (Specialist)	15
Information Officer I (Supervisor)	15
Information Officer II	15
<u>Information Officer III CEA</u>	<u>15</u>
Information Systems Technician C	3
Information Systems Technician Supervisor I	3
Information Systems Technician Supervisor II	3
<u>Labor Relations Specialist</u>	<u>2, 3</u>
Legal Counsel A	15
Legal Counsel B	15
Management Services Technician B	2, 3
<u>Personnel Selection Consultant I</u>	<u>2, 3</u>
<u>Personnel Specialist</u>	<u>2, 3</u>
Personnel Services Specialist I	2, 3
Personnel Services Specialist II	2, 3
<u>Personnel Supervisor I</u>	<u>2, 3</u>
Principal PU Financial Examiner	15
Principal Transportation Division	2, 3, 15
<u>Printing Trades Supervisor I (General)</u>	<u>2, 3</u>
Program and Project Supervisor	2, 3, 15
Program Manager	2, 3, 15

<u>Program Technician III</u>	<u>2, 3, 15</u>
Public Utilities Counsel I, PUC	15
Public Utilities Counsel II, PUC	15
Public Utilities Counsel III, PUC	15
Public Utilities Counsel IV, PUC	15
Public Utilities Regulatory Analyst I A	15
Public Utilities Regulatory Analyst I B	15
Public Utilities Regulatory Analyst I C	15
Public Utilities Regulatory Analyst II	15
Public Utilities Regulatory Analyst III	15
Public Utilities Regulatory Analyst IV	15
Public Utilities Regulatory Analyst V	15
Public Utilities Financial Examiner II	15
Public Utilities Financial Examiner III	15
Public Utilities Financial Examiner IV	15
Senior Electrical Engineer	15
Senior Information Systems Analyst (Supervisor)	3
Senior Programmer Analyst (Supervisor)	3
Senior Rapid Trans. Comp. Control Syst. Spec	11, 12
Senior Transportation Operations Supervisor	11, 12
Senior Transportation Rate Expert	11, 12
Senior Transportation Representative	11, 12
Senior Utilities Engineer (Specialist)	15
Senior Utilities Engineer (Supervisor)	15
<u>Special Consultant</u>	<u>2, 3, 15</u>
Staff Information Systems Analyst (Specialist)	3
Staff Information Systems Analyst (Supervisor)	3
Staff Programmer Analyst (Specialist)	3
Staff Programmer Analyst (Supervisor)	3
Staff Services Analyst (General) A, B, C	2, 3
Staff Services Manager I	2, 3
Staff Services Manager II (Managerial)	2, 3
Staff Services Manager II (Supervisor)	2, 3
Staff Services Manager III	2, 3
Supervising Transportation Engineer	11, 12
Supervising Transportation Rate Expert	11, 12
Supervising Transportation Representative	11, 12
Supervisor Operations & Safety Section, PUC	11, 12
<u>Telecommunications Systems Analyst I</u>	<u>15</u>
Transportation Analyst B, C	15
Utilities Engineer	15

(b.) Designated (Exempt) Employees**Applicable Disclosure Categories**

<u>Administrative Analyst (Supervisor)</u>	<u>2, 3</u>
<u>Administrative Analyst (Specialist)</u>	<u>2, 3</u>
<u>Advisor, Policy and Planning, PUC</u>	<u>2, 3, 15</u>
<u>Advisor, Energy Efficiency and Renewables, PUC</u>	<u>4, 5, 6</u>
<u>Communications Director, PUC</u>	<u>15</u>
<u>Coordinator, Media and Public Relations</u>	<u>15</u>
Director, Office of Ratepayer Advocates	1
Executive Director, PUC	1
Executive Coord for Media & Public Relations	15
General Counsel, PUC	1
Legal Advisor I	1
Legal Advisor II	1
Legislative Analyst, PUC	15
Legislative Director, PUC	2, 3, 15
<u>Legislative Representative</u>	<u>2, 3, 15</u>
<u>Small Business Community Liaison, PUC</u>	<u>2, 3, 15</u>
<u>Special Advisor</u>	<u>1</u>
Technical Advisor, PUC	1

(c.) Other**Applicable Disclosure Categories**

Commission Consultants	16
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2. Disclosure Categories**(a.) General Rules and Definitions**

For purposes of the following disclosure categories, "income" includes gifts, loans, and travel payments.

For purposes of the following disclosure categories, "business entity" means any organization or enterprise, including but not limited to a proprietorship, firm, business trust, joint venture, syndicate, corporation or association. "Business position" means any business entity in which the filer is a director, officer, partner, trustee, employee or holder of a position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or had done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.

Where a CPUC employee holds one position for personnel purposes, but in fact performs work of another kind, the employee is subject to the disclosure categories for both positions. For example, if an employee is classified as a PURA V, but in fact is working as a Commissioner's Advisor, the employee must disclose all interests applicable to PURA V's and any additional interests that a Commissioner's Advisor must disclose. Similarly, those employees in the CEA classifications working as Commissioner Advisors should disclose all interests that a Legal Advisor or a Technical Advisor (Exempt) must disclose.

(b) Disclosure Categories

Category 1

Designated officials and employees assigned to this category must report all sources of income, interests in real property, and investments and business positions in business entities.

Category 2

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that provide services, supplies, materials, machinery or equipment of the type purchased, leased, or obtained by contract by the California Public Utilities Commission other than those interests reported under Category 3. This includes any related training or consulting services.

Category 3

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that manufacture, sell, distribute or otherwise provide computers, computer hardware, computer software, computer services, computer models, or computer-related supplies, materials, machinery, or equipment of the type utilized by the California Public Utilities Commission. This includes any related training or consulting services.

Category 4

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that design, develop, construct, operate, maintain, sell or acquire facilities that transmit or distribute electricity or natural gas, or that generate electricity, or entities that are gas, electricity, or energy consultants, research firms, or engineering firms.

Category 5

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that are energy consultants, entities that design, build, manufacture, sell, distribute or maintain equipment of the type that is utilized especially or particularly by energy service providers, or research or engineering firms that provide services to energy service providers.

Category 6

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that provide energy conservation services or energy management services, and entities that design, build, manufacture, sell, distribute or maintain energy conservation or energy management devices.

Category 7

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that design, develop, construct, operate, maintain, sell or acquire facilities for telecommunications services.

Category 8

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that are telecommunications consultants, entities that design, build, manufacture, sell, distribute or maintain equipment or related products of the type that are utilized especially or particularly by telecommunications providers and end-users, or research or engineering firms that provided services to telecommunications providers.

Category 9

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that design, develop, construct, operate, maintain, sell, or acquire facilities for water utility service, as well as business entities that design, develop, manufacture, operate, maintain or sell water conservation devices or services.

Category 10

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that are hydrological or geological consultants, or entities that design, build, manufacture, sell, distribute or maintain equipment or related products of the type that are utilized especially or particularly by water utilities and end-users, or research or engineering firms that provide services to water utilities.

Category 11

Designated employees assigned to this category must report all income from, and investment and business positions in, business entities that design, develop, construct, operate, maintain, sell or acquire railroads, light rail transit and other transit systems that are within the jurisdiction of the California Public Utilities Commission.

Category 12

Designated employees assigned to this category must report all income from, and investments and business positions in, business entities that design, build manufacture, sell, distribute or maintain equipment or related products of the type that are utilized especially or particularly by motor carriers, railroads, light rail transit and other transit systems that

are within the jurisdiction of the California Public Utilities Commission, or consultants or research or engineering firms that provide services to motor carriers, railroads, light rail transit and other transit systems within the jurisdiction of the California Public Utilities Commission.

Category 13

Designated employees assigned to this category must report all income from, and investments and business positions in business entities that have applied for, can reasonably be expected to apply for, or have received approval from the California Public Utilities Commission of funding for intervenor participation or other purpose.

Category 14

Designated employees assigned to this category must report all interests in real property located within the state of California.

Category 15

Designated employees assigned to this category must comply with all the reporting requirements in Categories 4 through 14.

Category 16

Consultants to the California Public Utilities Commission or to a regulated entity on behalf of the Commission (as defined in Title 2, California Code of Regulation § 18700) must disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The executive director may determine in writing that a particular consultant is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements. Such written determination shall include a description of the consultant's duties and, based upon the description, a statement of the extent of disclosure requirements. The determination of the executive director is a public document and shall be retained for public inspection in the same manner and location as the disclosure statements.

(END OF ATTACHMENT)